



U.S. Department of Justice

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February 26, 2019

VIA ECF

Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: Kelley Amadei, et al. v. Kirstjen M. Nielsen, et al.
Case No.: 17-CV-5967 (Garaufis, J.) (Scanlon, M.J.)**

Dear Judge Garaufis:

This Office represents the six Defendants, each sued in their official capacity, in the above-referenced action. Defendants write respectfully to request a one-week extension of time, from February 26, 2019 to March 5, 2019, to file objections, pursuant to Fed. R. Civ. P. 72, to Judge Scanlon's discovery ruling that certain documents are not protected by the attorney-client and/or work product privileges. *See* Dkt. No. 94, Judge Scanlon's February 12, 2019 Order. Plaintiffs oppose the extension request as untimely under the Court's Individual Rule II.E. However, as stated below, Defendants respectfully submit an explanation for the timing of this application as required by the Court's Individual Rule when making such requests less than 48 hours before a deadline.

By way of background, Plaintiffs allege in their Complaint that U.S. Customs and Border Protection ("CBP") has a policy of checking the identification of passengers disembarking domestic flights. Plaintiffs claim that this alleged policy was the cause of an identification check of passengers disembarking Delta Air Lines Flight 1583 following its arrival at John F. Kennedy International Airport ("JFK") from San Francisco. Plaintiffs also allege that the application of this purported policy violated their Fourth Amendment rights. CBP denies that it has any such policy.

As discovery has proceeded, Plaintiffs sought various documents from CBP. Recently, the parties have disputed whether certain training materials, prepared by counsel and concerning the constitutionality of searches and seizures, are protected by the attorney-client and/or work product privileges. On February 12, 2019, Judge Scanlon ruled that they are not. *See* Dkt. No. 94.

Defendants request an extension of time to object to this ruling because CBP is working to prepare a declaration in support of the privilege assertion. As noted above, Defendants apologize for not making this request 48-hours prior to the deadline. This Office first received the transcript of the February 12, 2019 Court conference on Thursday, February 21. Then, after receipt of the transcript, both CBP and this Office reviewed it to determine whether to appeal the ruling. Given

